UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

SAN MIGUEL HOSPITAL CORP. d/b/a ALTA VISTA REGIONAL HOSPITAL

Case Nos. 28-CA-21896 28-RC-6518

And

DISTRICT 1199NM, NATIONAL UNION OF : HOSPITAL AND HEALTHCARE EMPLOYEES :

RESPONDENT / EMPLOYER'S MOTION TO STRIKE, ALTERNATIVELY, REPLY TO ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT / EMPLOYER'S RESPONSE TO NOTICE TO SHOW CAUSE

As the Respondent / Employer in the above-captioned cases, San Miguel Hospital Corporation d/b/a Alta Vista Regional Hospital (hereafter, "Alta Vista" or the "Hospital") hereby moves, by and through the Hospital's Undersigned Counsel, to strike the Acting General Counsel's Opposition (hereafter, at times, the "General Counsel's Opposition") to the Hospital's Response (hereafter, at times, "Alta Vista's or the Hospital's Response") to the Notice to Show Cause (hereafter, at times, the "Notice to Show Cause") issued by the National Labor Relations Board (hereafter, the "Board") in the above-referenced cases on September 30, 2010. Alternatively, Alta Vista hereby replies, by and through the Hospital's

Undersigned Counsel, to the General Counsel's Opposition to the Hospital's Response.¹

ARGUMENT

For the reasons set forth below, the Board should strike the General Counsel's Opposition, which, at its core, is simply a belated and oblique attempt to amend the Complaint and pled for the award of summary judgment. See fn. 1, supra. Alternatively, should the Board deny the Hospital's request to strike the Opposition, the Board should reject the arguments set forth by the Opposition.

1.) The Board Should Strike the General Counsel's Opposition

In the Opposition, the General Counsel asserts that "nothing has changed regarding the Respondent's alleged unlawful conduct," because the Hospital "has refused and continues to refuse to bargain with the Union." See Opposition, page 2. Accordingly, the General Counsel urges the Board to grant the Motion for Summary Judgment. Id. at page 3.

Under the Notice to Show Cause, the General Counsel was granted leave to amend the Complaint by no later than October 10, 2010 to conform with the current state of the evidence. See San Miguel Hospital Corporation, 355 NLRB No. 212 (September 30, 2010). As conceded by the Opposition, the General

¹ For the necessary background, Alta Vista respectfully refers the Board to the Hospital's Response (see pages 1-4), and hereafter shall use some of the abbreviations employed by the Response.

Counsel elected not to amend the Complaint. See Opposition, page 2 ("Respondent is correct that the General Counsel did not amend the Complaint"). And yet, through the Opposition, the General Counsel specifically alleges that Alta Vista "has refused and continues to refuse to bargain with the Union." Id. Under the Notice to Show Cause, the General Counsel was obliged to set forth such an allegation by no later than October 10, 2010, and not, incidentally, by way of an Opposition to the Hospital's Response, but rather by way of an Amended Complaint. Now, close to two (2) months beyond the Board's deadline, the General Counsel has decided to unveil the allegation that Alta Vista has unlawfully refused to bargain with the Union up to the present day. The General Counsel suggests that any previous amendment to the Complaint was not "necessary or appropriate" (see Opposition, page 3), a suggestion which is, of course, directly at odds with the Notice to Show Cause, whereby the Board expressly granted the General Counsel leave to amend the Complaint to conform with the current state of the evidence. Such a step, the timely amendment of the Complaint, would have clearly been the "appropriate," and even, the "necessary" step.

Beyond the General Counsel's belated attempt to amend the Complaint *via* the Opposition to the Hospital's Response, the General Counsel also makes an untimely request for the Board to grant the Motion for Summary Judgment. Under the Notice to Show Cause, the General Counsel was obliged to file any statement

in support of the Motion for Summary Judgment by no later than November 14, 2010. See San Miguel Hospital Corporation, 355 NLRB No. 212 (September 30, 2010). In the Opposition, the General Counsel does respond to the arguments set forth by the Hospital's Response, but the essential request conveyed by the Opposition is for the Board to grant the Motion for Summary Judgment. See Opposition, page 3. As noted, under the Notice to Show Cause, November 14, 2010 was the deadline for the General Counsel to request that the Board grant the Motion for Summary Judgment. Accordingly, the General Counsel has also failed to make a timely request for the Board to grant the Motion for Summary Judgment.

In summary, the Board should strike the entirety of the Opposition, which is comprised of the General Counsel's untimely attempts to allege unlawful conduct on the part of the Hospital and the equally belated request for the Board to grant the Motion for Summary Judgment.

2.) Alternatively, the Board Should Reject the General Counsel's Arguments

Even upon the presumption, solely for the sake of argument, that the Board should not strike the Opposition, the Board should reject the arguments set forth by the Opposition.

In the Opposition, the General Counsel asserts that the RM Petitions filed by Alta Vista "play no role" as to validity of the September 30, 2010 Certification or as to whether the Board should have granted the Certification. See Opposition,

pages 1-2. To say the least, the General Counsel's assertion is off-base, since the RM Petitions were filed before the issuance of the Certification and plainly raised a "question concerning representation," as contemplated by Section 9(c) of the Act.

Additionally, the General Counsel argues that Alta Vista's claim that the Board failed to give any meaningful review to the Hospital's Exceptions is "unjustified speculation and without merit." See Opposition, page 2. In point of fact, Alta Vista's position is not aloft in any speculation, but rather, anchored to the fact that, whereas the two-Member Board took well over three (3) months to rule upon the Hospital's Exceptions, the three-Member Board took all but four (4) business days. Accordingly, with due respect to the Board's Members, Alta Vista states, once more, that the Board cavalierly ignored the Hospital's Exceptions, and therefore, flagrantly violated the Hospital's due process rights.

CONCLUSION

For all the reasons set forth above, Alta Vista respectfully requests that the Board strike the General Counsel's Opposition. Alternatively, Alta Vista respectfully requests that the Board reject the arguments set forth by the Opposition.

Dated:

December 7, 2010

Glastonbury, Connecticut

Respectfully submitted,

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DISTRICT 1199NM, NATIONAL UNION OF : HOSPITAL AND HEALTHCARE EMPLOYEES :

CERTIFICATE OF SERVICE OF RESPONDENT / EMPLOYER'S MOTION TO STRIKE, ALTERNATIVELY, REPLY TO ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT / EMPLOYER'S RESPONSE TO NOTICE TO SHOW CAUSE

The Undersigned, Bryan T. Carmody, Esq., being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. § 1746, that the original of the Respondent / Employer's Motion to Strike, Alternatively, Reply to Acting General Counsel's Opposition to Respondent / Employer's Response to National Labor Relations Board's Notice to Show Cause (hereafter, the "Motion / Reply") is being filed this date by San Miguel Hospital Corporation in the above-captioned matter *via* e-filing at www.nlrb.gov, being the website maintained by the National Labor Relations Board.

The Undersigned further does hereby certify that a copy of the Motion / Reply is being provided this date to the following *via* e-mail:

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Dated:

December 7, 2010

Glastonbury, Connecticut

Respectfully submitted,

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